

HOGAN & HARTSON  
L.L.P.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

LINDA L. OLIVER  
PARTNER  
DIRECT DIAL (202) 637-6527

COLUMBIA SQUARE  
555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109  
TEL (202) 637-5600  
FAX (202) 637-5910

October 5, 1998

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M St., N.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-15, 98-78, 98-91, and CCB/CPD No. 98-15, and RM-9244

Dear Ms. Salas:

Attached for filing in the referenced dockets, on behalf of Qwest Communications Corporation ("Qwest"), are the original and four copies of Qwest's Opposition to the Petition for Reconsideration filed by SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell and the Petition for Partial Reconsideration or, Alternatively, For Clarification, filed by the Bell Atlantic Telephone Companies of the Commission's August 7, 1998 Memorandum Opinion and Order in the captioned proceedings.

Please call me if you have any questions.

Respectfully submitted,



Linda L. Oliver  
Counsel for Qwest Communications  
Corporation

Enclosures

0+4

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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OCT - 5 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matters of

Deployment of Wireline Services Offering  
Advanced Telecommunications Capability

CC Docket No. 98-147

Petition of Bell Atlantic Corporation  
For Relief from Barrier to Deployment of  
Advanced Telecommunications Services

CC Docket No. 98-11

Petition of US West Communications Inc.  
For Relief from Barrier to Deployment of  
Advanced Telecommunications Services

CC Docket No. 98-26

Petition of Ameritech Corporation to  
Remove Barriers to Investment in  
Advanced Telecommunications Technology

CC Docket No. 98-32

Petition of the Alliance for Public  
Technology Requesting Issuance of Notice  
of Inquiry and Notice of Proposed  
Rulemaking to Implement Section 706 of  
the 1996 Telecommunications Act

CCB/CPD No. 98-15  
RM 9244

Petition of the Association for Local  
Telecommunications Services (ALTS) for a  
Declaratory Ruling Establishing Conditions  
Necessary to Promote Deployment of  
Advanced Telecommunications Capability  
Under Section 706 of the  
Telecommunications Act of 1996

CC Docket No. 98-78

Southwestern Bell Telephone Company,  
Pacific Bell, and Nevada Bell Petition for  
Relief from Regulation Pursuant to Section  
706 of the Telecommunications Act of 1996  
and 47 U.S.C. § 160 for ADSL  
Infrastructure and Service

CC Docket No. 98-91

## OPPOSITION OF QWEST COMMUNICATIONS CORPORATION TO PETITIONS FOR RECONSIDERATION

Qwest Communications Corporation ("Qwest") hereby respectfully submits its opposition to the Petition for Reconsideration filed by SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell ("SBC") and the Petition of the Bell Atlantic Telephone Companies ("Bell Atlantic") for Partial Reconsideration or, Alternatively, For Clarification, of the Commission's August 7, 1998 Memorandum Opinion and Order in the captioned proceedings. 1/

The petitioners challenge the Advanced Services Order on two grounds. First, they argue that the Commission's requirement that incumbent local exchange carriers ("ILECs") are required to provide access to loops "conditioned" for use with xDSL electronics violates the Eighth Circuit's decision in Iowa Utilities Board v. FCC. 2/ Specifically, the petitioners argue that the mandated provision to competitors of such "conditioned" loops would constitute the required provision of a "superior in quality" facility to a requesting carrier, in alleged violation Iowa Utilities Board. Second, the petitioners challenge the Commission's view that Section 706 of the 1996 Telecommunications Act, 47 U.S.C. § 157 note, does not

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1/ Deployment of Wireline Services Offering Advanced Telecommunications Capability, Petition of Bell Atlantic Corp., et al., CC Docket Nos. 98-147, et al., FCC 98-188 (released August 7, 1998) ("Advanced Services Order").

2/ Iowa Utilities Board v. FCC, 120 F.3d 753, 812-13 (8th Cir. 1997), cert. granted, 118 S.Ct. 879 (1998) ("Iowa Utilities Board").

constitute an independent grant of forbearance authority to the Commission. The Commission should reject both grounds for reconsideration for the reasons discussed below.

**I. THE REQUIREMENT TO PROVIDE ACCESS TO CONDITIONED LOOPS.**

The petitioners lack any basis for challenging the Commission's decision requiring ILECs to provide competitors with access to loops conditioned to be attached to xDSL electronics. First, the requirement that ILECs provide access to conditioned loops was established long ago in the Commission's August 1996 Local Competition Order.<sup>3/</sup> The petitioners should have sought reconsideration or judicial review of the Local Competition Order on this point. The Local Competition Order is now final and cannot be subject to reconsideration or further judicial review. The petitioners are barred from challenging it now, on reconsideration of the Advanced Services Order.<sup>4/</sup>

The petitioners attempt to dodge this problem by asserting that the conditioned loops requirement violates the Eighth Circuit's decision in Iowa

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<sup>3/</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98, 95-185, First Report and Order, FCC 96-325, released August 8, 1996, 11 FCC Rcd 15499, at para. 380 (1996), aff'd in part and rev'd in part, Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), cert. granted, 118 S.Ct. 879 (1998) ("Local Competition Order").

<sup>4/</sup> The Commission itself made clear in the Advanced Services Order that the requirement to provide access to conditioned loops had already been established in the August 1996 Local Competition Order. Advanced Services Order at para. 152, citing Local Competition Order at paras. 380-82

Utilities Board, which invalidated the Commission's "sur adopted in the same Local Competition Order that esta. requirement. 5/ The problem with this argument is that the condition a loop so that it can be combined with xDSL electronics constitute the provision of a "superior in quality" facility or functional. simply involves removing certain impediments in the existing copper loop to that loop to be used with advanced electronics that are provided by the competitor. In fact, the copper loop conditioned for xDSL, when provided to a competitor without xDSL electronics, is actually not capable, without xDSL electronics, of providing service in any way superior to the conventional local exchange service provided by the ILEC over a loop that has not been conditioned. Moreover, as the FCC made clear, the ILECs are not required to do any more than what is "technically feasible." 6/

In any case, both Bell Atlantic and SBC (along with the other RBOCs and GTE) have already begun to provide their own xDSL services, so even if the prohibition on requiring a "superior in quality" facility did apply in the context of conditioned loops, the petitioners (and the other RBOCs and GTE, at a minimum)

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5/ Iowa Utilities Board, 120 F 3d 753, 812-13.

6/ Advanced Services Order at para. 152, citing Local Competition Order at para. 382.

would have to provide competitors with access to those conditioned loops, since they are already providing such access to themselves <sup>7/</sup>

It should be apparent that the petitioners' real goal here is to be able to stop competitors from providing xDSL services over existing copper ILEC loops until the ILECs themselves are ready to provide xDSL services. Taken to its extreme, the petitioners' argument would permit an ILEC to refuse to condition any copper loop until the ILEC itself had already decided to provide xDSL services over that very loop. Of course at that point, the competitor would have to win the customer away from the ILEC, because the customer would by then, by definition, be an ILEC advanced services customer.

At bottom, the petitioners' complaint is not really about having to prepare or "condition" copper loops -- an activity for which they would be

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<sup>7/</sup> All of the RBOCs and GTE have announced deployment of xDSL technology in their regions. See "Bell Atlantic's New ISP Partnership Program Will Bring Customer Choice to the High-Speed Internet Access Market," Bell Atlantic Press Release, September 30, 1998 (announcing rollout of ADSL services in at least four states and the District of Columbia by early 1999); "Bell Atlantic to Offer High-Speed Links to Net," Washington Post, June 4, 1998, at E3; "SBC's Pacific Bell Unit Unveils ADSL Plans, Files Pricing Tariff," Telecommunications Reports, June 1, 1998, at 34 (SBC); "Bells, GTE, and Computer Giants Say ADSL Working Group Will Speed Deployment," Telecommunications Reports, February 2, 1998, at 23-24 (US West); "BellSouth Plots Ambitious ADSL Plan," Multichannel News, May 25, 1998, at 1 (BellSouth and Ameritech); News Release, "BellSouth Announces Aggressive 30 Market Roll-Out of Ultra-High Speed BellSouth.Net FastAccess ADSL Internet Services," May 20, 1998, at [www.bellsouthcorp.com](http://www.bellsouthcorp.com); "GTE Jumps Into xDSL Game as UAWG Works on Standard," Telecommunications Reports, April 20, 1998, at 18; "GTE to Offer Ultra-Fast Internet Access," April 13, 1998, Announcement on GTE website, [www.gte.com/g/news/adsl041398.html](http://www.gte.com/g/news/adsl041398.html).

compensated by the requesting carrier. <sup>8/</sup> The ILECs' real complaint is that they cannot block CLECs from employing ILEC unbundled loops to provide advanced services in competition with the ILECs. If the Commission were to grant reconsideration, the ILECs would be able to completely block any competitive provision of xDSL services over copper loops until the ILECs were ready themselves to roll out the service. This obviously would leave consumers, particularly those without other options for obtaining broadband services, with no ability to reap the benefits of advanced technology.

It also is telling that the ILECs demanded, in the very same forbearance petitions, that the Commission exercise its forbearance authority to permit them to refuse to competitors access to loops *equipped* with xDSL electronics. If the ILECs had succeeded on that point as well, <sup>9/</sup> they could have accomplished a total lockout of competitors from the advanced services market, by

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<sup>8/</sup> Bell Atlantic complains that consumers will have to pay for its activities in preparing loops for requesting carriers. Bell Atlantic Petition at 5. This complaint is entirely unfounded. The Commission has made it clear, both in the Local Competition Order and in the Advanced Services Order, that "[t]he requesting carrier bears the cost of such conditioning." Advanced Services Order at para. 53 n.98, citing Local Competition Order at para. 382.

<sup>9/</sup> The Commission squarely rejected this ILEC argument in the Advanced Services Order, where it held that the Act's market-opening provisions, including the network element provisions of Section 251(c)(3), apply equally to advanced technologies such as xDSL. Advanced Services Order at para. 59 ("the facilities and equipment used to provide advanced services are network elements subject to the obligations in Section 251(c)(3)").

preventing these competitors from employing *any* ILEC loops to deploy competitive advanced services. 10/

## II. SECTION 706 AS AN INDEPENDENT GRANT OF FORBEARANCE AUTHORITY.

The petitioners also seek to overturn the Commission's decision that it Section 706 does not confer on the Commission additional authority to forbear in circumstances under which Section 10 of the Act, 47 U.S.C. § 160, would not permit it to forbear. The petitioners advance nothing new in the way of arguments to support their request, instead merely parroting the arguments they made in their forbearance petitions. As the Commission correctly concluded in the Advanced Services Order, the Commission plainly lacks the legal authority to forbear under Section 706 when it cannot justify such forbearance pursuant to the specific test set forth in the Act's forbearance section, Section 10

First, Section 706 by its own terms is not an independent grant of forbearance authority. Rather, it merely directs the Commission to use the forbearance authority that is specifically granted in Sections 10 and 332 in order to promote deployment of advanced services. This is clear from the context: for example, Section 706 also directs the Commission to use price cap regulation

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10/ As Qwest discussed in detail in its comments on the Advanced Services NPRM, competitors seeking to provide broad-based competitive advanced services need access to loops that are already equipped with ILEC xDSL electronics and ILEC interoffice packet transport and switching, as well as requiring the option of employing ILEC conditioned loops. See Comments of Qwest Communications Corporation, filed September 25, 1998, in CC Docket No. 98-147, at 63-66.



toward the same end, even though the FCC's authority to adopt price cap regulation for interstate telecommunications service was well-settled when the 1996 Act was enacted. <sup>11/</sup>

Moreover, unlike the detailed standards governing the specific forbearance authority provided in Sections 10 and 332, Section 706 of the Act contains no substantive standards governing when forbearance would be required or permitted. <sup>12/</sup> Congress clearly expressed its intent in Section 10(d) that the Commission may not forbear from enforcing Sections 251(c) and 271 until those sections are fully implemented. When it does consider whether to forbear from such key pro-competitive provisions, it must evaluate the state of the market at the time the request for forbearance is made, and make all the factual and policy determinations required by Sections 10's specific three-part test.

There also is no basis for the FCC to allow the RBOCs into the interLATA business before they have met the requirements of Section 271. Congress made it clear that regardless of the nature of the interLATA services, the RBOCs must meet certain requirements before being allowed to provide them. The fact that RBOCs cannot offer these services today reflects a considered and balanced policy choice that is at the heart of the 1996 Act: RBOC entry into interLATA markets should be contingent on full opening of local markets in order to

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<sup>11/</sup> See National Rural Telecom Assn v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

<sup>12/</sup> 47 U.S.C. § 160(a), 332, 157n.

give the RBOCs a powerful incentive to open their local networks to competitors.

The wisdom of that choice applies with equal force to the interLATA services described in the petitions for forbearance that the Commission denied in the Advanced Services Order. The construction of interLATA networks for data purposes is still construction of interLATA networks. The Commission needs to hold tight to the carrot of interLATA entry if it is to see the benefits of the Act realized.

Likewise, Section 251(c)(3) of the Act does not contemplate that the Commission will freeze the RBOC network in time, allowing the RBOCs to deny access to the network simply because it evolves with technological change, as the Commission recognized elsewhere in the Advanced Services Order.<sup>13/</sup> Instead, that section gives requesting carriers access to all the "features, functions, and capabilities" of the network. 47 U.S.C. § 153(29). Indeed, Congress understood that telecommunications networks are dynamic and fast-changing, and that many different technologies can be used to provide the same services. If Congress had intended to draw lines around services or network facilities or technologies, it would have done so.

In sum, the RBOCs' proposed end run around the Act's statutory forbearance framework should not be countenanced, and their petitions for reconsideration must be denied.

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<sup>13/</sup> Advanced Services Order at para. 57

## CONCLUSION

For the reasons given, the Commission should deny the petitions for reconsideration.

Respectfully submitted,

QWEST COMMUNICATIONS  
CORPORATION

By: 

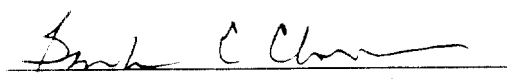
Joseph T. Garrity  
Senior Director,  
Legal, Regulatory and  
Legislative Affairs and  
Corporate Secretary  
Qwest Communications  
Corporation  
555 17th Street  
Denver, CO 80202  
(303) 992-1621

Peter A. Rohrbach  
Linda L. Oliver  
Hogan & Hartson, L.L.P.  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004  
(202) 637-5600  
  
Counsel for Qwest Communications  
Corporation

October 5, 1998

## CERTIFICATE OF SERVICE

I, Barbara E. Clocker, hereby certify that on this 5th day of October, 1998, a copy of the attached Opposition of Qwest Communications Corporation to the Petition for Reconsideration filed by SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell and the Petition of the Bell Atlantic Telephone Companies for Partial Reconsideration or, Alternatively, For Clarification, of the Commission's August 7, 1998 Memorandum Opinion and Order in CC Docket Nos. 98-147, et al, was hand delivered or sent by First Class Mail (where indicated) to the parties listed below

  
Barbara E. Clocker

James D. Ellis\*  
Robert M. Lynch\*  
Durward D. Dupre\*  
Darryl W. Howard\*  
Southwestern Bell Telephone Company  
One Bell Center, Room 3528  
St. Louis, MO 63101

Mark L. Evans  
Sean A. Lev  
Rebecca A. Beynon  
Kellogg, Huber, Hanson, Todd, & Evans  
1301 K Street, N.W., Suite 1000 West  
Washington, D.C. 20005

Lawrence W. Katz (via facsimile)  
Michael E. Glover  
Bell Atlantic  
1320 N. Courthouse Road  
Eighth Floor  
Arlington, VA 22201

M. Robert Sutherland\*  
Stephen L. Earnest  
BellSouth Corporation  
1155 Peachtree Street, N.W., Suite 1700  
Atlanta, GA 30309

Thomas Gann\*  
Sun Microsystems  
1300 I Street, N.W.  
Suite 420 East  
Washington, D C. 20005

Cherie Kiser\*  
Michael Bressman  
Mintz, Levin  
701 Pennsylvania Ave., N.W.  
Suite 900  
Washington, D C. 20004

Joel Bernstein\*  
Halprin, Temple, Goodman & Sugrue  
1100 New York Avenue, N.W.  
Suite 650 East  
Washington, D.C. 20005

Russell Staiger\*  
BMDA  
400 East Broadway Avenue  
Bismarck, ND 58501

\*indicates via First Class Mail

John T. Lenahan\*  
Ameritech Corporation  
2000 West Ameritech Center Drive  
Room 4H84  
Hoffman Estates, IL 60196

William T. Lake\*  
John Harwood  
Jonathan Frankel  
Wilmer, Cutler & Pickering  
2445 M Street, N.W.  
Washington, D.C. 20037

Marueen Lewis\*  
Alliance for Public Technology  
901 15th Street, N.W., Suite 230  
Washington, D.C. 20037

J. Jeffrey Oxley\*  
Assistant Attorney General  
Minnesota Dept. of Public Service  
1200 NCL Tower  
445 Minnesota Street  
St. Paul, MN 55101-2130

William Rooney, Jr.\*  
Counsel for Global NAPs, Inc.  
Ten Winthrop Square  
Boston, MA 02110

Cheryl Parrino\*  
Public Service Commission of Wisconsin  
P. O. box 7854  
Madison, WI 53707-7854

G. Richard Klein\*  
Indiana Utility Regulatory Commission  
302 W. Washington, Suite E-304  
Indianapolis, IN 46204

Randall Lowe\*  
J. Todd Metcalf  
Piper & Marbury  
1200 19th Street, N.W.  
Washington, D.C. 20006

Blossom Peretz\*  
NJ Division of the Ratepayer Advocate  
31 Clinton Street, 11th Floor  
Newark, NJ 07101

A. Daniel Sheinman\*  
Laura Ipsen  
Cisco Systems  
170 West Tasman Drive  
San Jose, CA 95134

Carol Weinhaus\*  
Telecommunications Industries Analysis  
Project  
Public Utility Research Center  
Meeting House Offices  
121 Mount Vernon Street  
Boston, MA 02108

John Dodge\*  
Cole, Raywid & Beverman  
1919 Pennsylvania Ave., N.W., 2nd Floor  
Washington, D.C. 20006

Mitchell Lazarus\*  
Fetcher, Heald  
1300 North 17th Street  
Arlington, VA 22209

Alceann Wolhbruck\*  
National Association of Development  
Organizations  
444 North Capitol Street, N.W., Suite 630  
Washington, D.C. 20001

Frank Simone\*  
AT&T  
1120 20th Street, N.W., Suite 1200  
Washington, D.C. 20036

Richard Taranto\*  
Farr & Taranto  
Bell Atlantic  
1850 M Street, N.W., Suite 1000  
Washington, D.C. 20036

Bartlett L. Thomas\*  
James J. Valentino\*  
Mintz Levin Cohn Ferris Glovsky &  
Popeo  
701 Pennsylvania Ave., N.W., Suite 900  
Washington, D.C. 20004

Christopher W. Savage\*  
Jame F. Ireland\*  
Cole Raywid & Braverman  
1919 Pennsylvania Ave., N.W., Suite 200  
Washington, D.C. 20006

Henry Geller\*  
Alliance for Public Technology  
901 15th Street, N.W., Suite 230  
Washington, D.C. 20005

National Association of Commissions for  
Women\*  
1828 L Street, N.W., Suite 250  
Washington, D.C. 20036

United Homewoners Association\*  
1511 K Street, N.W.  
Washington, D.C. 20005

National Hispanic Council on Aging\*  
2713 Ontario Street, N.W.  
Washington, D.C. 20009

National Association of Development  
Organizations\*  
444 North Capitol Street, N.W., Suite 630  
Washington, D.C. 20001

Colleen Boothby\*  
Levin Blaszak Block and Boothby  
2001 L Street, N.W., Suite 900  
Washington, D.C. 20036

World Institute on Disability\*  
510 16th Street, Suite 100  
Oakland, CA 94612

Terrence K  
Level 3 C  
3555 Fr  
Omaha

David N.  
WorldCom Inc.  
1120 Connecticut  
Washington, D.C.

Randall B. Lowe\*  
Piper & Marubuiry  
1200 19th Street, N.W.  
Washington, D.C. 20036

Richard D. Marks\*  
Vinson & Elkins  
1455 Pennsylvania Ave., N.W., Suite 700  
Washington, D.C. 20004

Thomas M. Koutsky\*  
Assistant General Counsel  
COVAD Communications Company  
35670 Bassett Street  
Santa Clara, CA 95054

George Vradenburg III\*  
America Online Inc.  
1101 Connecticut Ave., N.W., Suite 400  
Washington, D.C. 20036

Jeffrey A. Campbell\*  
Stacey Stern Albert  
Compaq Computer Corporation  
1300 I Street, N.W.  
Washington, D.C. 20005

Howard J. Symons\*  
Michelle M. Mundt  
Mintz Levin Cohn Ferris Glovsky & Popeo  
701 Pennsylvania Ave., N.W., Suite 900  
Washington, D.C. 20004

\*indicates via First Class Mail

Gordon M. Ambach\*  
Executive Director  
Council of Chief State School Officers  
One Massachusetts Ave., N.W., Suite 700  
Washington, D.C. 20036

Mark J. Tauber\*  
Teresea S. Werner\*  
Pioper & Marbury  
1200 19th Street, N.W., Seventh Floor  
Washington, D.C. 20036

Cedar City/Iron County Economic Dev.\*  
110 N. Main Street  
P. O. Box 249  
Cedar City, UT 84720

Dr. David Lyteld\*  
NYSERNET Inc.  
125 Elwood Davis Road  
Syracuse, NY 13212

Joseph W. Waz Jr.\*  
Comcast Corporation  
1500 Market Street  
Philadelphia, PA 19102

D. Robert Webster\*  
Bamberger & Feibleman  
54 Monument Circle, Suite 600  
Indianapolis, IN 46204

James R. Colththarp\*  
Senior Director of Public Policy  
Comcast Corporation  
1317 F. Street, N.W.,  
Washington, D.C. 20004

Albert H. Kramer\*  
Michael Carowitz\*  
Dickstein Shapiro Morin & Oshinsky  
2101 L Street, N.W.  
Washington, D.C. 20037

Chapin Burks\*  
St. George Area Chamber of Commerce  
97 East St. George Blvd.  
St. George, UT 84770

Thomas Sugrue\*  
Joel Bernstein\*  
Halprin Temple Goodman & Sugrue  
1100 New York Ave., N.W.  
Suite 650 East  
Washington, D.C. 20005

Christopher J. White\*  
Deputy Assistant Ratepayer Advocate  
State of New Jersey  
31 Clinton Street, 11th Floor  
Newark, NJ 07101

John Hanes\*  
House Corporation  
Wyoming State Legislature  
213 State Capitol  
Cheyenne, WY 82008

Jack Crews\*  
Cheyenne Leads  
1720 Carey Ave., Suite 401  
P. O. Box 1045  
Cheyenne, WY 82003-1045

C. Bennett Lewis\*  
Executive Director  
Aurora Chamber of Commerce  
3131 South Vaughnway, Suite 426  
Aurora, CO 80014

Robert D. Boyse\*  
Laramie Economic Development Corp.  
1482 Commerce Drive, Suite A  
Laramie, WY 82070

Karen Peltz Strauss\*  
814 Thayer Ave.  
Silver Spring, MD 20910-4500

John Windhuasen\*  
Competition Policy Institute  
1156 15th Street, N.W., Suite 310  
Washington, D.C. 20005

Scott Truman\*  
Utah Ruaral Development Council  
Administration Building 304  
southern Utah University  
Cedar City, UT 84720

Thomas J. Dunleavy\*  
New York PSC  
Three Empire State Plaza  
Albany, NY 12223

Gerald Stevens-Kittner\*  
CAI Wireless Suystems, Inc.  
2101 Wilson Blvd., Suite 100  
Arlington, VA 22201

William J. Rooney Jr.\*  
Global Naps Inc.  
Ten Whinthrop Square  
Boston, MA 02110

Russell Staiger\*  
Bismark/Mandan Development Assn.  
400 E. Broadway Ave., Suite 417  
Bismark, ND 58502

Joseph K. Witmer\*  
Pennsylvania PUC  
Commonwealth Ave. & North St.  
Room 116  
P. O. Box 3265  
Harrisburg, PA 17105

Issue Dynamics Inc.\*  
901 15th Street, Suite 230  
Washington, D.C. 20005

Ellen Deutsch\*  
Senior Counsel  
Electric Lightway Inc.  
8100 NE Parkway Drive, Suite 200  
vancouver, WA 98662

National Association of Community  
Action Agencies\*  
1100 17th Street, N.W., Suite 500  
Washington, D.C. 20036

Thomas Hatch\*  
House of Representatives  
State of Utah  
P. O. Box 391  
Panguitch, UT 84759

Economic Strategy Institute\*  
1401 H Street, N.W., Suite 750  
Washington, D.C. 20005

Electric Lightwave Inc.\*  
Legal Counsel  
4400 77th Ave.  
Vancouver, WA 98662

Gene Vuckovich\*  
Montana Rural Development Partners  
115 E. Seventh Street, Suite 2A  
Anaconda, MT 59711

Barbara A. Dooley\*  
Commercial Internet eXchange Assoc.  
1041 Sterling Road, Suite 104A  
Herndon, VA 20170

Kevin Timpane\*  
Firstworld Communications Inc.  
9333 Genessee Ave., Suite 200  
San Diego, CA 92121

Cindy Z. Schonhaut\*  
ICG Communications Inc.  
161 Inverness Drive  
Englewood, CO 80112

David J. Newburger\*  
Newburger & Vossmeier  
One Metropolitan Square, Suite 2400  
St. Louis, MO 63102

\*indicates via First Class Mail



Albert H. Kramer\*  
Michael Carowitz  
Dickstein Shapiro Morin & Oshinsky  
2101 L Street, N.W.  
Washington, D.C. 20037

W Scott McCollough\*  
McCollough and Associates  
1801 N. Lamar, Suite 104  
Austin, TX 78701

Frank Michael Panek\*  
Ameritech  
2000 W. Ameritech Center Drive  
Room 4H84  
Hoffman Estates, IL 60196

Dana Frix\*  
Kemal M. Hawa  
Swidler & Berlin  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007

Steven M. Hoffer\*  
Coalition Representing Internet Service  
Provider  
95 Mariner Green Dr.  
Corte Madera, CA 94925

Marie Guillory\*  
National Telephone Cooperative Assoc.  
2626 Pennsylvania Ave., N.W.  
Washington, D.C. 20037

Peter Arth Jr.\*  
William N. Foley  
Mary Mack Adu  
505 Van Ness Ave.  
San Francisco, CA 94012

Robert B. McKenna\*  
US West Communications Inc.  
1020 19th Street, N.W., Suite 700  
Washington, D.C. 20036

Angela Ledford\*  
Keep America Connected!  
P. O. Box 27911  
Washington, D.C. 20005

Competitive Pricing Division\*  
Federal Communications Commission  
1919 M Street, N.W., Room 518  
Washington, D.C. 20554

Charles D. Gray\*  
NARUC  
1100 Pennsylvania Ave., Suite 608  
P. O. Box 684  
Washington, D.C. 20044

Mary McDermott\*  
Linda Kent  
United States Telephone Assoc.  
1401 H Street, N.W., Suite 600  
Washington, D.C. 20005

Eric R. Olbeter\*  
Economic Strategy Institute  
1401 H Street, N.W., Suite 750  
Washington, D.C. 20005

Dr. Janet K. Poley  
University of Nebraska  
C218 animal Sciences  
P. O. Box 830092  
Lincoln, NE 68583-0952

Rodney L. Joyce\*  
J. Thomas Nolan  
Shook, Hardy & Bacon  
801 Pennsylvania Ave., N.W.  
Washington, D.C. 20004  
(for Network Access Solutions, Inc.)

Charles C. Hunter\*  
Catherine M. Hannan  
Hunter Communications Law Group  
1620 I Street, N.W., Suite 701  
Washington, D.C. 20006

David W. Zesiger, Executive Director\*  
Donn T. Wonnell  
Independent Telephone &  
Telecommunications Alliance  
1300 Connecticut Ave., N.W., Suite 600  
Washington, D.C. 20036

R. Gerard Salemmé\*  
Daniel Gonzalez  
Cathleen A. Massey  
NEXTLINK Communications, Inc.  
1730 Rhode Island Ave., N.W., Suite 1000  
Washington, D.C. 20036

Riley M. Murphy\*  
e.spire Communications, Inc.  
133 National Business Pkwy., Suite 200  
Annapolis Junction, MD 20701

Brad E. Mutschelknaus\*  
Ross A. Buntrock  
Kelley Drye & Warren  
1200 19th Street, N.W., 5th Floor  
Washington, D.C. 20036

Lawrence G. Malone\*  
New York Department of Public Service  
Three Empire State Plaza  
Albany, NY 12223

Catherine R. Sloan\*  
Richard L. Fruchterman III  
Richard S. Whitt  
David N. Porter  
WorldCom, Inc.  
1120 Connecticut Ave., N.W., Suite 400  
Washington, D.C. 20036

Ronald L. Plessner\*  
Mark J. O'Connor  
Stuart P. Ingis  
Piper & Marbury  
1200 Nineteenth Street, N.W., 7th Floor  
Washington, D.C. 20036  
(for Commercial Internet Exchange  
Assoc.)

Gail L. Polivy\*  
GTE Service Corporation  
1850 M Street, N.W.  
Washington, D.C. 20036

Kecia Boney\*  
Dale Dixon  
Lisa B. Smith  
MCI Telecommunications Corporation  
1801 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

Anthony C. Epstein\*  
Jenner & Block  
601 Thirteenth Street, N.W.  
Washington, D.C. 20005

Kevin Sievert\*  
Glen Grochowski  
MCI Communications  
400 International Parkway  
Richardson, TX 75081

Ava B. Kleinman\*  
Mark C. Rosenblum  
AT&T Corporation  
295 North Maple Avenue  
Room 3252J1  
Basking Ridge, NJ 07920

Leon M. Kestenbaum\*  
Jay C. Keithley  
H. Richard Juhnke  
Sprint Corporation  
1850 M Street, N.W., 11th Floor  
Washington D.C. 20036

J. Manning Lee\*  
Teresa Marrero  
Teleport Communications Group, Inc.  
2 Teleport Drive, Suite 300  
Staten Island, NY 10311

\*indicates via First Class Mail

Russell Blau\*  
Dana Frix  
Jonathan D. Draluck  
Swidler & Berlin  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20006  
(for Hyperion Telecommunications and  
USN Communications, Inc.)

Lawrence E. Sarjeant\*  
Linda Kent  
Keith Townsend  
United States Telephone Association  
1401 H Street, N.W., Suite 600  
Washington, D.C. 20005

Jonathan Jacob Nadler\*  
Brian J. McHugh  
Squire, Sanders & Dempsey  
1201 Pennsylvania Avenue, N.W.  
Box 407  
Washington, D.C. 20044  
(for the Information Technology  
Association of America)

M. Robert Sutherland\*  
Stephen M. Klimacek  
BellSouth Corporation  
1155 Peachtree Street, N.E.  
Suite 1700  
Atlanta, GA 30309-3610

James D. Ellis\*  
Robert M. Lynch  
Durward D. Dupre  
Darryl W. Howard  
SBC Communications, Inc.  
One Bell Plaza, Rm. 3703  
Dallas, TX 75202

Jeffrey Blumenfeld\*  
Christy Kunin  
Frank V. Paganelli  
Blumenfeld & Cohen  
1615 M Street, N.W., Suite 700  
Washington, D.C. 20036  
(counsel for Rhythms NetConnections,  
Inc.)

Steven Gorosh\*  
NorthPoint Communications, Inc.  
222 Sutter Street  
San Francisco, CA 94108

Russell M. Blau\*  
Richard M. Rindler  
Tamar E. Finn  
Swidler & Berlin, Chtd.  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
(counsel for Focal Communications  
Corporation, Hyperion  
Telecommunications, Inc., KMC Telecom  
Inc. and McLeodUSA Incorporated)

Jonathan Canis\*  
Kelley Drye & Warren LLP  
1200 19th Street, NW, Suite 500  
Washington, DC 20036  
(counsel for Competitive  
Telecommunications Association)

Genevieve Morelli\*  
Competitive Telecommunications  
Association  
1900 M Street, NW, Suite 800  
Washington, D.C. 20036

Richard J. Metzger\*  
Emily M. Williams  
Association for Local Telecommunications  
Services  
888 17th Street, N.W., Suite 900  
Washington, D.C. 20006

\*indicates via First Class Mail

Riley M. Murphy\*  
James C. Falvey  
American Communications Services, Inc.  
131 National Business Parkway,  
Suite 100  
Annapolis Junction, MD 20701

Brad E. Mutschelknaus\*  
Edward A. Yorkgitis, Jr.  
John J. Heitman  
Kelley Drye & Warren LLP  
1200 19th Street, N.W., Suite 500  
Washington, D.C. 20036  
(for ACSI)

Robert M. McKenna\*  
Jeffrey A. Brueggeman  
US WEST, Inc.  
1020 19th Street, N.W., Suite 700  
Washington, D.C. 20036

William E. Kennard, Chairman  
Federal Communications Commission  
1919 M St., N.W., Room 814  
Washington, D.C. 20554

Susan Ness, Commissioner  
Federal Communications Commission  
1919 M St., N.W., Room 832  
Washington, D.C. 20554

Harold Furchtgott-Roth, Commissioner  
Federal Communications Commission  
1919 M St., N.W., Room 802  
Washington, D.C. 20554

Michael K. Powell, Commissioner  
Federal Communications Commission  
1919 M St., N.W., Room 844  
Washington, D.C. 20554

Gloria Tristani, Commissioner  
Federal Communications Commission  
1919 M St., N.W., Room 826  
Washington, D.C. 20554

John Nakahata, Chief of Staff  
Federal Communications Commission  
1919 M St., N.W., Room 814  
Washington, D.C. 20554

Thomas Power, Legal Advisor to  
Chairman William E. Kennard  
Federal Communications Commission  
1919 M St., N.W., Room 814  
Washington, D.C. 20554

James L. Casserly  
Senior Legal Advisor to  
Commissioner Susan Ness  
Federal Communications Commission  
1919 M St., N.W., Room 832  
Washington, D.C. 20554

Kevin Martin, Legal Advisor to  
Commissioner Harold Furchtgott-Roth  
Federal Communications Commission  
1919 M St., N.W., Room 802  
Washington, D.C. 20554

Kyle D. Dixon, Legal Advisor to  
Commissioner Michael Powell  
Federal Communications Commission  
1919 M St., N.W., Room 844  
Washington, D.C. 20554

Paul Gallant, Legal Advisor to  
Commissioner Gloria Tristani  
Federal Communications Commission  
1919 M St., N.W., Room 826  
Washington, D.C. 20554

John Berresford  
Senior Antitrust Attorney  
Industry Analysis Division  
Common Carrier Bureau  
Federal Communications Commission  
2033 M Street, N.W., Room 399-A  
Washington, D.C. 20554

\*indicates via First Class Mail

Kathryn Brown, Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M St., N.W., Room 500  
Washington, D.C. 20554

Lawrence Strickling, Deputy Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M St., N.W., Room 500  
Washington, D.C. 20554

James Schlichting, Deputy Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M St., N.W., Room 500  
Washington, D.C. 20554

Ruth Milkman, Deputy Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M St., N.W., Room 500  
Washington, D.C. 20554

Carol Matthey, Chief  
Policy and Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M St., N.W., Room 544  
Washington, D.C. 20554

Michael Pryor, Deputy Chief  
Policy and Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M St., N.W., Room 544  
Washington, D.C. 20554

Melissa Newman, Deputy Chief  
Policy and Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M St., N.W., Room 544  
Washington, D.C. 20554

Linda Kinney  
Policy Division

Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

Lisa Sockett  
Policy and Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M St., N.W., Room 544  
Washington, D.C. 20554

Jason Oxman  
Policy and Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

Dale Hatfield, Chief Technologist  
Office of Plans & Policy  
Federal Communications Commission  
1919 M Street, N.W., Room 822  
Washington, D.C. 20554

Robert Pepper  
Chief, Office of Plans & Policy  
Federal Communications Commission  
1919 M Street, N.W., Room 822  
Washington, D.C. 20554

Jonathan Weinberg  
Office of Plans & Policy  
Federal Communications Commission  
1919 M Street, N.W., Room 822  
Washington, D.C. 20554

International Transcription Service  
Federal Communications Commission  
1231 20th Street, N.W.  
Washington, D.C. 20554